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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

WASHINGTON TOXICS COALITION;) Civ. No. C04-1998C
NORTHWEST COALITION FOR)
ALTERNATIVES TO PESTICIDES;)
NATIONAL WILDLIFE FEDERATION;)
DEFENDERS OF WILDLIFE; NATURAL) DECLARATION OF
RESOURCES DEFENSE COUNCIL;) LAURIE ANN MACDONALD
CENTER FOR BIOLOGICAL DIVERSITY;)
PACIFIC COAST FEDERATION OF)
FISHERMEN'S ASSOCIATIONS;)
INSTITUTE FOR FISHERIES RESOURCES;)
and HELPING OUR PENINSULA'S)
ENVIRONMENT,)

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF)
INTERIOR; UNITED STATES)
DEPARTMENT OF FISH AND WILDLIFE)
SERVICE; UNITED STATES)
DEPARTMENT OF COMMERCE; and)
NATIONAL MARINE FISHERIES)
SERVICE,)

Defendants,

DECLARATION OF LAURIE ANN
MACDONALD (C04-1998) - 1 -

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1)
 2 and)
 3)
 4 CROPLIFE AMERICA, WASHINGTON)
 5 FRIENDS OF FARMS AND FORESTS,)
 6 WASHINGTON STATE POTATO)
 7 COMMISSION, NATIONAL POTATO)
 8 COUNCIL, WASHINGTON STATE FARM)
 9 BUREAU, IDAHO FARM BUREAU)
 10 FEDERATION OF WHEAT GROWERS,)
 11 WASHINGTON GOLF COURSE)
 12 SUPERINTENDENTS ASSOCIATION, HOP)
 13 GROWERS OF WASHINGTON, AND)
 14 WASHINGTON STATE HORTICULTURAL)
 15 ASSOCIATION,)
 16)
 17 Defendant-Intervenors.)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)

I, Laurie Ann Macdonald, hereby state and declare as follows:

1. I reside in St. Petersburg, Florida. I am the Florida Director of Defenders of Wildlife (“Defenders”). I have been employed in this position since August 1999. I have worked for Defenders since March of 1994, when I became a Field Representative. I have been a member of Defenders since at least 1994. I rely on Defenders to promote my personal interests in promoting biological diversity, including the protection of threatened and endangered species and their habitats, in Florida and throughout the United States.

2. As the Director of the Florida office of Defenders, I oversee the activities of the office, which include activities to protect and restore wildlife habitat, especially protections for threatened and endangered species and their habitats. I participate in developing recovery plans for species, working for sound land acquisition and land management programs, educating the public, and state and federal lobbying on imperiled species and their habitats. Our office works to protect biological diversity, including the full array of species and their habitats, with focal

1 activities to support the Florida black bear, and also the Florida panther, and Florida manatee,
2 which are listed under the Endangered Species Act (“ESA”).

3 3. I have a masters degree in wildlife zoology. My masters research, which was
4 published in Herpetologica in 1986, was on the foraging ecology of the gopher tortoise. I am
5 aware that run-off and spray drift from pesticides have contributed to the decline of species and
6 their habitats generally in Florida, and I am particularly concerned about the effects of pesticides
7 on species listed as threatened or endangered under the ESA. In particular, the Florida alligator
8 has suffered significant harm from the effects of pesticides and herbicides that enter its habitat,
9 become part of its food chain, and endanger its survival.

10 4. Studying, observing, and protecting wildlife and their habitat is both my vocation
11 and my avocation. I have contributed thousands of hours of volunteer time throughout my life
12 on conservation work. I frequently apply my scientific expertise to testify before governmental
13 bodies on habitat and wildlife conservation and recovery plans, and I frequently review and
14 comment on habitat and wildlife management plans. Personally, I love to hike, camp, kayak,
15 canoe, cycle, swim, read, write and draw in the out of doors. I engage in all of these outdoor
16 activities as frequently as I am able, and recreate on both public and private lands where I can
17 observe wildlife and wildlife habitat. I spend virtually every vacation recreating outside,
18 viewing and enjoying wildlife, in Florida, the United States, and throughout the world. I intend
19 to continue these activities this month, this year, and in the future, as long as I am physically
20 able. I will seek to gain new knowledge about wildlife and its existence throughout my life.

21 5. Earlier this month, I was on a field expedition trip to the Osceola National Forest
22 in Florida to listen to frogs, insects and nocturnal birds, to identify mammal tracks and signs (and
23 flight – bats), and to see the habitat of resident woodpeckers, including those species listed under
24

1 the ESA. I enjoyed the experience tremendously, because it is peaceful and rewarding to me to
2 listen to and observe species in their native habitat. I derive pleasure and personal satisfaction
3 knowing these species exist, and from having opportunities to observe them and their calling,
4 nesting, resting, burrowing and foraging sites. I was also recently at the Eglin Air Force Base in
5 the Florida panhandle, where I was shown restoration areas for the Okaloosa darter fish and its
6 habitat. I worry about the survival of this fish, and I look forward to the day when this species
7 might be fully recovered. At the beginning of this month I was at the Florida Panther National
8 Wildlife Refuge and the Big Cypress National Preserve to identify panther and bear signs, as
9 well as other species, and to observe an alligator congregation site (from a distance).

10 6. Defenders is a registered non-profit corporation with headquarters in Washington,
11 D.C. Defenders has over 480,000 members throughout all 50 states who enjoy wildlife and
12 wildlife habitat through observation, scientific inquiry, recreation, photography, and other
13 commercial, personal, and spiritual endeavors. Defenders is dedicated to the protection of all
14 native wild animals and plants in their natural communities. Defenders focuses its programs on
15 what scientists consider two of the most serious environmental threats to the planet: the
16 accelerating rate of extinction of species and the associated loss of biological diversity; and
17 habitat alteration and destruction. Defenders has long been known for its leadership on
18 endangered species issues.

19 7. Defenders is active in protecting wildlife, including protecting species listed as
20 threatened or endangered under the Endangered Species Act ("ESA"), from the harmful effects
21 of pesticides. Defenders seeks to protect wildlife from pesticides in at least five ways: 1)
22 commenting on pesticide registrations and risk assessments; 2) commenting on changes to EPA's
23 risk assessment and consultation processes under the joint counterpart regulations; 3) bringing
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1 litigation to halt the harmful application of pesticides; 4) coordinating the National Pesticide
2 Reform Coalition, and 5) promoting legislation consistent with these efforts.

3 8. Defenders has commented to EPA on pesticide registrations and risk assessments,
4 urging EPA to take actions that would help protect listed species and wildlife. For example, in
5 September 1999, Defenders submitted comments arguing against the registration of chlorfenapyr
6 on cotton, citing the unacceptable risk to the environment that chlorfenapyr poses, specifically to
7 listed species. In May 2003, Defenders submitted comments on the EPA's "Potential Risks of
8 Nine Rodenticides to Birds and Non-target Mammals: A Comparative Approach," which
9 assessed the environmental impacts of several harmful pesticides including brodifacoum and
10 difethialone. In August 2004, Defenders submitted comments on the Interim Reregistration
11 Eligibility Decision for methyl parathion, arguing that EPA should not re-register this pesticide,
12 in part, because of the threat to listed species. In January 2005, Defenders joined on comments
13 to the carbaryl Interim Reregistration Eligibility Decision, petitioning EPA to cancel carbaryl,
14 due to its unreasonable risks to the environment, noting that the pesticide presents a serious risk
15 to endangered species. Since June 2002, Defenders has consistently commented to EPA on
16 carbofuran applications, urging EPA to reverse its decisions to permit its use based on its impacts
17 to wildlife and listed species. Defenders has similarly commented to EPA on permit applications
18 to aerially apply Arsenal (active ingredient imazapyr) and Accord (active ingredient glyphosate)
19 because the proposed herbicide spraying poses an unnecessary threat to water quality.

20 9. In April 2004, Defenders submitted comments to defendants NOAA Fisheries and
21 the U.S. Fish and Wildlife Service (collectively, the "Services") on their proposed rule under the
22 ESA counterpart regulations that would violate the ESA by delegating to EPA their mandatory
23 ESA duties to ensure that federal actions do not take listed species or destroy or adversely
24

1 modify their habitat. Defenders, and its members, who have an interest in maintaining listed
2 species and their habitat, are also harmed by the Services' approval of EPA's pesticide risk
3 assessment methods, which are not adequately protective of listed species, including the piping
4 plover, other birds, butterflies, aquatic organisms, the Florida manatee, Florida panther, Florida
5 bear, and other wildlife. The Services should not approve EPA's pesticide risk assessment
6 methods, because they fail to account for the cumulative effects of pesticides on listed species, or
7 the sublethal effects that impair endangered species' abilities to resist disease and predation in
8 the wild. The Services and EPA's new rule weakens protections for listed species from
9 pesticides under the ESA and federal pesticide laws. These actions degrade species' habitats,
10 because they allow pesticide residues to enter into habitat and the food chain through run-off and
11 spray drift from agricultural, municipal, and industrial uses, harming these species.

12 10. Defenders has participated as a plaintiff in at least four other cases involving the
13 harmful effects of pesticides on listed species and other wildlife. In Environmental Defense
14 Fund, Inc. v. Watt, 722 F.2d 1081 (2nd Cir. 1983), Defenders, along with three other conservation
15 organizations, filed suit to halt the use of pesticides for mosquito control in the Seatuck and
16 Wertheim National Wildlife Refuges on Long Island, NY, alleging that FWS failed to comply
17 with NEPA and the National Wildlife Refuge System Administration Act. In National
18 Cattlemen's Assoc. v. U.S. Environmental Protection Agency, 773 F.2d 268 (10th Cir. 1985),
19 Defenders sued EPA regarding its decision to remove the ban on compound 1080, sodium
20 fluoroacetate, a highly toxic chemical banned in 1972 due to many deaths of non-target species.
21 In Defenders of Wildlife v. U.S. Environmental Protection Agency, 882 F.2d 1294 (8th Cir.
22 1989), Defenders challenged the EPA's registration of strychnine, alleging that the continued
23 approval of strychnine for certain uses was causing the take of threatened and endangered
24

1 species in violation of the ESA.¹ The Eighth Circuit ultimately concluded that EPA's strychnine
2 registrations constituted "take" in violation of section 9 of the ESA. In Defenders of Wildlife v.
3 Whitman, Civ. No. 02-02089 (filed D.D.C. 2002), Defenders challenged EPA's failure to
4 comply with the ESA and Migratory Bird Treaty Act, in connection with its registration of the
5 pesticide fenthion. Fenthion is widely recognized as causing severe adverse environmental
6 effects, and is toxic to birds, butterflies, aquatic organisms and other wildlife. Indeed, conclusive
7 evidence linked fenthion spraying in Florida to the deaths and injuries of numerous birds and
8 other species, including species listed under the ESA, such as the piping plover. This case was
9 stayed in 2003, after the manufacturer of fenthion requested a voluntary cancellation of all its
10 registrations for products containing pesticide. As a result, EPA ordered the cancellation of all
11 registrations of fenthion, see 68 Fed. Reg. 55609 (Sept. 26, 2003), stating that fenthion product
12 registrations "are hereby cancelled as of June 30, 2004" and that, after this date, "it will be
13 unlawful for any person to distribute or sell any fenthion product," except that existing stocks
14 may be used in accordance with EPA label directions and restrictions until November 30, 2004.
15 Id. at 55610.

16 11. Together with the American Bird Conservancy, Defenders established the
17 National Pesticide Reform Coalition. This Coalition seeks to coordinate the efforts of
18 conservation and pesticide advocacy groups, and currently includes about twenty organizations.

19 12. Defenders' California office has also worked to preserve the San Joaquin kit fox,
20 an ESA-listed species, from the harmful effects of pesticides. Defenders is spearheading an
21 effort to pass legislation in California that would address the use of rodenticides that affect the
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23 ¹ The listed species at issues in this case included: Utah Prairie Dog, Morro Bay Kangaroo Rat, Salt
24 Marsh Harvest Mouse, Red Wolf, Masked Bobwhite, Dusky Seaside Sparrow, Cape Sable Sparrow,
Mississippi Sandhill Crane, Puerto Rican Plain Pigeon, Attwaters Greater Prairie Chicken, Yellow-
Shouldered Blackbird, Laysan Finch, Nihoa Finch, California Condor, Black-Footed Ferret, San Joaquin

1 fox.

2 13. I am injured by the decline of the piping plover, the Florida manatee, the Florida
3 panther, the Okaloosa darter fish, the alligator, and other listed bird and wildlife species in
4 Florida, because I care about healthy bird and wildlife populations and properly functioning
5 ecosystems. I derive substantial enjoyment and fulfillment from observing and studying these
6 species and other wildlife in Florida, and from knowing that these species exist. I intend to
7 continue to observe, or attempt to observe, these species this year, in the future, and as long as
8 these species are available for viewing. These opportunities have become increasingly difficult
9 in my lifetime due to the decline of these species, which harms my interests and me. The
10 Services' delegation of their mandatory ESA duties to the EPA, which fails to adequately protect
11 listed species from the effects of pesticides, because it uses faulty risk assessment methods and
12 insufficient protections, harms these and other listed species in Florida by reducing their
13 numbers. In turn, this harms my interests in observing these species in the wild. On the other
14 hand, if the Services complied with the law, and properly evaluated the effects of pesticides on
15 these and other listed species, the harmful effects on these species would be lessened, resulting in
16 their greater numbers, and my enhanced enjoyment of them due to increased observation and
17 studying opportunities.

18 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
19 and correct to the best of my knowledge.

20 Executed this 13th day of May, 2005 in St. Petersburg, Florida.

21
22 Laurie Ann Macdonald
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24

25 Kit Fox, Gray Wolf, Grizzly Bear

26 DECLARATION OF LAURIE ANN
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